

APPEAL NO. 032188
FILED OCTOBER 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 29, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable injury on _____; that she had disability, as a result of her compensable injury, from August 1, 2002, through the date of the hearing; and that the claimed injury was not caused by the claimant's willful attempt to injure herself. In its appeal, the appellant (carrier) asserts error in the hearing officer's disability determination. In her response to the carrier's appeal, the claimant urges affirmance. The carrier did not appeal the determinations that the claimant sustained a compensable injury or that she did not willfully attempt to injure herself thereby relieving the carrier of liability for compensation and those determinations have, accordingly, become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had disability from August 1, 2002, through the date of the hearing. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant bears the burden of establishing that a compensable injury was a producing cause of her disability. A disability determination can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951). The hearing officer was persuaded that the claimant sustained her burden of proving that her compensable injury was a cause of her inability to obtain and retain employment at her preinjury wage despite her subsequent fall at home, which resulted in a fractured femur. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the disability determination on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge